IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.133 OF 2005
IN
LETTERS PATENT APPEAL NO.463 OF 2004
IN
CIVIL APPLICATION NO.541 OF 2004
IN
WRIT PETITION NO.3641 OF 2003

1. Mr.P.M. Ghare & ors. ... ... Applicants
v/s.
1. M/s.Jaysynth Anthraquinone Ltd. & anr. ... ... Respondents

W I T H

CIVIL APPLICATION NO.132 OF 2005
IN
LETTERS PATENT APPEAL NO.464 OF 2004
IN
CIVIL APPLICATION NO.542 OF 2004
IN
WRIT PETITION NO.3462 OF 2003

1. Mr.Arjun D. Chikhale & ors. ... Applicants
v/s.
1. M/s.Jaysynth Dyechem Ltd. & anr. ... Respondents

Mr.E.P.Bharucha with Mr.P.M.Patel for Applicants.

Mr.K.K.Singhavi with Mr.A.K.Jalsatgi for res.No.1.

Ms.N.D.Buch with Ms.Bina Dholakia for res.No.2.
(In both matters)

CORAM : H.L. GOKHALE &
SMT.R.S.DALVI, JJ.

DATE : 11th July 2005
ORAL ORDER : (Per H.L.Gokhale, J.)

1. These two Civil Applications in the two Appeals are filed by individuals who are employees of the 1st respondent-Company. Through these Civil Applications, leave is sought to file and

prosecute the two Letters Patent Appeals. The applications have become necessary since the applicants are desirous of challenging the common order passed by a learned Single Judge (Dr.D.Y. Chandrachud, J.) in two writ petitions viz. Writ Petition No.3641 of 2003 and Writ Petition No.3462 of 2003 wherein the applicants were not parties. A Trade Union by name Association of Chemical Workers represented these workmen along with other workmen totalling to about 538 who were employed by two sister Companies. The Companies are respondent No.1 in both these Civil Applications and the above Union is respondent No.2. The learned Single Judge passed a common order dated 30th June 2004 on Civil Applications Nos.541 and 542 of 2004 taken out in both these Writ Petitions by the said Union which sought to recall the order that he had passed earlier on 3rd October 2003. The learned Judge rejected those Civil Applications by the impugned order dated 30th June 2004. The learned Judge recorded in that order that a settlement had been arrived earlier between the two Companies and the said Union though formal consent terms were yet to be placed before him. He had recorded the fact of this settlement in his earlier order of 3.10.2003 of which the review was sought. He held that the settlement which was

arrived at and mentioned in his order dated 3rd October 2003 was binding and executable. It is this order passed on 30th June 2005 which is under challenge in the Appeals. It is material to note that the Union which was the respondent to the said Writ Petitions had filed these two Civil Application Nos.541 and 542 of 2004 to recall the order dated 3rd October 2003. The Union has not chosen to challenge this order dated 30th June 2004 rejecting both these Civil Applications.

2. Mr.Bharucha, learned Counsel appearing for the applicants, submitted that the order passed on 3rd October 2003 could not be said to be recording the fact that a settlement had been arrived at between the parties. He submitted that all that is stated in that order is that the petitioners before the learned Single Judge i.e. the two Companies had agreed to pay a total sum of Rs.6.67 Crores in full and final settlement of all the claims of the workmen. However, the very paragraph recorded that formal consent terms were to be placed before the Court. Firstly, he submitted that the learned Single Judge was not correct in coming to the conclusion later-on that an executable order had been passed on 3rd October 2003. The second submission of Mr.Bharucha was

that all that is stated in that particular paragraph in the order dated 3rd October 2003 was about all the claims, dues and outstanding amounts. Nothing was stated about the right of employment of the workmen concerned and, therefore, the settlement was not acceptable to the workmen who have filed these Civil Applications and they should be allowed to agitate the same. If this settlement meant giving up the right to employment, it amounted to contracting out of Section 25-O of the Industrial Disputes Act, 1947 which was otherwise applicable since the workmen employed in the concerned Companies were more than 100. In this behalf, Mr.Bharucha relied upon a judgment of the Apex Court in the case of **Oswal Agro Furance Ltd. & anr. vs. Oswal Agro Furance Workers Union & ors. reported in (2005) 1 C.L.R. 816** to submit that such a contracting out and the settlement resulting therefrom is bad in law.

3. Before we appreciate the submissions of Mr.Bharucha, we have to note that these two Writ Petitions which came up before the learned Single Judge were arising out of an order on a Complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour

Practices Act, 1971, ("M.R.T.U. and P.U.L.P. Act, 1971" in short). This Association of Chemical Workers had filed those two Complaints bearing Nos.541 and 540 of 2001 before the Industrial Court at Thane. The prayer in these Complaints was to declare the lock-out effected by the Managements to be bad in law and give consequential benefits to the workmen. The Industrial Court did hold in favour of the workmen that the lock-out was bad in law and directed that the Management should re-engage the workmen concerned. The Industrial Court held that the lock-out was not bona fide and the same was sham and bogus and, therefore, in paragraph 25(4) of its order, the Industrial Court directed both the Companies to allow the concerned employees to report for duty and provide them work and wages as usual. It is this order passed on 23rd March 2003 which was under challenge in both these Writ Petitions. The submission of Mr.Bharucha was that the so-called settlement recorded in the order of Single Judge on 3.10.2003 cannot be said to be a settlement and in any case it was bad in law since it amounted to contracting out. Therefore, in his view, the learned Single Judge committed an error of law in declining review on 30.6.2004.

4. Mr.Singhvi, learned Counsel appearing for the two Companies, challenged the maintainability of the Appeals on the ground that the impugned order was an order where the learned Single Judge had declined to review / recall the order passed by him earlier. Such an order is not appealable under Order 47 Rule 7 of the Code of Civil Procedure.

5. However, without prejudice to this submission, he objected to the applications being entertained on the ground that the applicants-workmen concerned had no locus standi. He submitted that a settlement had been arrived at before the learned Single Judge after due deliberations between the Union and the Managements. He drew our attention to the charts which are annexed to the Appeal compilations. The charts show that the workmen were categorized into three groups viz. those who had put in less than 5 years service, those who had put in between 5 and 10 years and those who had put in more than 10 years of service. The gratuity, other dues and additional compensation are calculated in these charts. The Management had offered an amount of Rs.627.57 Lakhs to all these workmen. The Union had demanded Rs.887.20 Lakhs to begin with.

Finally, the Union came down to Rs.691.93 Lakhs and it was at that stage that an understanding was arrived at on 3rd October 2003 before the learned Judge where the Management was persuaded to settle all claims for Rs.667 Lakhs (or Rs.6.67 Crores).

6. We have perused these charts. The charts show that the gratuity is payable at the rate of 20 days for the workmen who had put in service between 5 and 10 years and 31 days for those who had put in more than 10 years of service. It is undoubtedly more than what is payable under the Payment of Gratuity Act. Mr.Bharucha, however, points out that the increased provision is as per the other settlement which is subsisting between the parties. That apart, the fact remains that the Union did obtain substantial amounts for the workmen towards the gratuity payable to all the workmen. Then there are components with respect to other dues which cover the claims such as leave, encashment, etc. As far as the additional compensation is concerned, for the employees who had put in less than 5 years of service, the compensation is provided at the rate of 15 days per year. It is at the rate of 10 days for those who had put in between 5 and 10 years and at the rate of 9 days for those who had put in more than

10 years of service. Thus, the charts provide for lesser retrenchment compensation to those who had put in more than 5 years service or 10 years service but they are going to get gratuity at rates better than the statutory provision. It is further seen from the chart provided by the Union that there were claims towards three months notice pay which would be payable under Section 25-O of the Industrial Disputes Act and certain other claims viz. unpaid wages, bonus etc. and finally some amounts payable to the five workmen who had expired. All these charts were placed before the Court from time to time. Yet the Management had made it clear that they were not agreeable to pay anything beyond what they had offered i.e. Rs.627.57 Lakhs. Mr.Singhvi pointed out that these are Companies whose claim to revive is pending before B.I.F.R. All these facts were before the Union, which was representing such a large number of employees and, therefore, finally it agreed to what was offered by the Management, but requested the Court that the figure may be increased. Therefore, whereas the Management was offering Rs.627.57 Lakhs and the Union had demanded Rs.691.93 Lakhs, the matter was finally settled as per the persuasion of the Court at Rs.6.67 Crores.

7. Therefore, as far as the submission of Mr.Bharucha, namely, that the settlement of 3rd October 2003 spoke only about the claims, dues and outstanding and that nothing was provided for re-employment cannot be accepted. The claim before the Industrial Court was for a declaration that lock-out was illegal. The Industrial Court had decided in favour of the workmen. The Management was in the High Court. The overall settlement is arrived at that stage. It is reflected in all these charts and which cover payments towards the gratuity also. Obviously, the claim to reinstatement was being given up by the workmen through the Union which represented them. That was the understanding arrived at on 3rd October 2003, which is reflected in the order of the learned Single Judge. The relevant paragraph of that order reads as follows:-

> " Today when the matter was called out, both the Learned Counsel have on the instructions of the respective clients informed the Court that the Petitioner has agreed to pay a total sum of Rs.6.67 crores in full and final settlement of all the claims, dues and outstandings of the

> workmen covered in the two petitions. The amount, which is due and payable as agreed is to be paid over in three installments, the first on or before 31st December, 2003, the second on or before 30th June, 2004 and the third on or before 31st December, 2004. Learned Counsel have agreed that formal Consent Terms incorporating the terms of the settlement which have been arrived at between the parties will be placed on the record on 10th October, 2003. "

As stated by the learned Judge in his order, this settlement had been arrived at on that date in full and final settlement with respect to all claims dues and outstandings. Only formal consent terms remained to be placed before the Court and they were to be placed on 10th October 2003. The submission of Mr.Bharucha was that interest of the workmen was not taken care of. We do not find any substance therein when we find that a provision has been made for gratuity, other dues and additional compensation.

8. It was submitted by Mr.Bharucha that no final settlement had been arrived at. It is seen

that on 10th October 2003, the Union reported that the workmen had refused to accept the settlement. The Union thereafter stated that it will place the subsequent developments on record and, therefore, moved these Civil Applications Nos.541 and 542 of 2004 to recall the order that was passed on 3.10.2003. Now, what is material to note is that in this order which was passed on the application for recall, the Management stated on 30th June 2004 that two out of the three installments remained to be paid as per the understanding / settlement which was arrived at on 3rd October 2003. These three installments are reflected in the order of 3rd October 2003, namely, that the payments were to be made on or before 31st December 2003, 30th June 2004 and 31st December 2004. Thus, on 30th June 2004, two installments were payable. The Union had filed these Civil Application Nos.541 and 542 of 2004 before the Court to submit that the workmen had repudiated the settlement. Nothing prevented the Union from saying that the two installments which were not paid till that date, will not be accepted by the Union and the workmen. It is material to note that thereafter these two installments and later-on the third one are received by the Union after these Civil Applications were rejected by

the Court. This conduct of the Union clearly goes to support the statement of the Management that in fact a settlement was arrived at between the Union and the Management on 3rd October 2003 and that the same was in the interest of the workmen. It is material to note that the cheques were given to the Union on behalf of the workmen and thereafter the Union has disbursed the amount to the workmen. It is also material to note that all the applicants, who are now before the Court, have also received the payments that were made by the Union on behalf of the Management, though they contend that these payments were received under protest. Looking to this conduct also, it is very clear that what the learned Single Judge recorded on 3rd October 2003 viz. that a settlement had been arrived at between the parties was correct. The formalities remained to be completed in the nature of signing the consent terms. The Union refused to sign any such documents on the ground that the workmen had repudiated the settlement. Yet when these two Civil Applications to recall the earlier order were rejected, the Union accepted the entire payment on behalf of the workmen thereby confirming the fact that the settlement had been arrived at as recorded by the learned Single Judge on 3rd October 2003.

Therefore, as regards the second submission of Mr.Bharucha, namely, that no formal settlement had been arrived at and, therefore, the workmen should be allowed to agitate the matter on their own, does not stand to reason.

9. In the case of **Byram Pestonji vs. Union Bank reported in (1992) 1 S.C.C. 31**, a decree in terms of the compromise signed by the Counsel of the parties but not by the parties themselves was held to be valid and binding. The judgment recognises the authority of Counsel to settle disputes. In the case of **Jineshwardas (Deceased) by L.Rs. & ors. vs. Smt.Jagrani & anr. reported in (2003) 11 S.C.C. 372** the circumstances were almost similar. A settlement between the parties was recorded in the order of the High Court. A review thereof was rejected. The order was challenged. Thereafter this recording settlement was held valid and enforceable by Apex Court. In para-4 of the impugned order the learned Single Judge has recorded that a statement was made before him by the Counsel for both the parties on the instructions of the authorised representatives of parties who were present in Court that full and final settlement had been arrived at and the final

consent terms will be presented on the next date. In the case of **State of Maharashtra vs. Ramdas Nayak reported in AIR 1982 S.C. 1249**, it is settled that a statement of fact as to what transpired at the hearing recorded in the judgment of the Court is conclusive. In the impugned order passed on 30.6.2004, the learned Single Judge declined to recall his order dated 3.10.2003 by observing that order dated 3.10.2003 was an executable order. This was followed by the Union and all the workmen including the applicants accepting the payments which were offered in full and final settlement. In these facts and circumstances, the finding of the learned Judge that order of 3.10.2003 recording settlement was valid and executable, cannot be faulted.

10. Mr.Bharucha, learned Counsel appearing for the applicants, relied upon a judgment of the Apex Court in the case of **Oswal Agro Furane Ltd.** (supra). In that matter, this Company was in financial difficulties and an amount of Rs.50 Crores was payable under different heads to the State. A notice was issued by the Management in terms of Section 25(O) of the Industrial Disputes Act to the Government and the workmen. A

purported settlement was thereafter arrived at in terms of Section 12(3) of the said Act. It is this settlement which was questioned by the respondent-Trade Union. It is in this context that the Apex Court observed that the provisions of Section 25-O are mandatory and the Management cannot contract out. Mr.Bharucha has pressed into service the observations in paragraphs 14 and 17 of this judgment to submit that contracting out is impermissible. Now, what is material to note is that as far as the present matter is concerned, here what was under consideration before the Industrial Court was the illegality of a lock-out. That lock-out was held to be illegal. In the Writ Petition filed by the Management challenging this lock-out, an over-all settlement was arrived at before the learned Single Judge. Different charts have been exchanged between the Management and the workmen represented by the Union. The charts disclose that the gratuity is to be paid by the Management. Obviously, that is for terminating the relationship between the employer and employees on the terms which were agreed to be between the parties. It cannot be said that in the present case the Management was violating any of the provisions of law. The Union represented the workmen. Discussions took place in Court.

The settlement was arrived at in the High Court after the matter was discussed and adjourned from time to time to facilitate the same. Full gratuity and other dues are agreed to be paid. As far as retrenchment compensation is concerned, what is provided is a lesser amount for those who have put in more than 5 years service but the same is agreed by the Union on behalf of the workmen. They however get gratuity at rates higher than the Statute. Thus, a proper balancing has been done.

11. There is always a give and take in such matters as held by the Apex Court in the case of **Herbertsons Ltd. vs. The Workmen of Herbertsons Ltd. & ors. reported in 1977 Lab. I.C. 162 = AIR 1977 S.C. 322**. In para-18 the Apex Court observed as follows:-

> " When a recognised union negotiates with an employer the workers as individuals do not come into the picture. It is not necessary that each individual worker should know the implications of the settlement since a recognised union, which is expected to protect the legitimate interests of labour, enters into a settlement in the best interest of labour.

> This would be the normal rule. We cannot altogether rule out exceptional cases where there may be allegations of malafides, fraud or even corruption or other inducements. Nothing of that kind has been suggested against the President of the 3rd respondent in this case. That being the position, prima facie, this is a settlement in the course of collective bargaining and, therefore, is entitled to due weight and consideration. "

It is submitted in the present case that the Union concerned was not a recognised Union. However, what is material to note is that the Complaint was filed by the Union under Section 28 of the MRTU and PULP Act. Section 28 permits a Union or individual person affected to file such a complaint. It was a Complaint filed by the Union on behalf of all the workmen and it was under consideration before the Industrial Court. The order thereon has ultimately led to the filing of the Writ Petitions and the settlement therein. The Union was, therefore, espousing the cause of the workmen properly and at no point of time until the present applications are moved, the workmen have pointed out anything to the contrary. Even

now there is no allegation against the Union. It is the Union itself which contended that the workmen were not inclined to accept the settlement after the understanding was arrived at on 3rd October 2003. Thereafter, as pointed out above from the conduct of the workmen, all of them accepted the dues which were paid by the Management. It is, therefore, not possible to accept these submissions of Mr.Bharucha to dispute the representative status of the Union in the facts of the present case.

12. Having gone through these charts, we do not find that there was anything unconscionable in the settlement which was arrived at by the Union with the employees. There is no allegation that the settlement was malafide or involved any fraud. This being the position, we do not think that we can entertain such applications of individual employees at late stage to contend that the order passed by the learned Single Judge is bad in law. Entertaining any such application will make it difficult for the Court to intervene for settlement of industrial dispute which is arrived at after spending good time and after adjourning the matter from time to time.

13. In the circumstances, both the Civil Applications seeking leave to appeal are rejected. Consequently, the Appeals will also stand dismissed.

(H.L. GOKHALE, J.)

(SMT. R.S.DALVI, J.)